

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.C. et al., Persons Coming Under the
Juvenile Court Law.

B268263
(Los Angeles County
Super. Ct. No. DK12702)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of the County of Los Angeles, Connie R. Quinones, Judge. Affirmed.

Michelle Ben-Hur, under appointment of the Court of Appeal, for Defendant and Appellant

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, Brian Mahler, Senior Associate County Counsel, for Plaintiff and Respondent.

J.C. (father) appeals from a judgment declaring his children (Javier C. and Jacqueline C.) minors described by Welfare and Institution Code section 300, subdivision (b),¹ and removing the children from father's custody under section 361, subdivision (c)(1). Father contends that (1) the jurisdictional finding is not supported by substantial evidence; and (2) the dependency court did not have the authority to remove the children from his physical custody because the children were not removed from mother's physical custody. We dismiss father's appeal of the court's jurisdictional findings and affirm the court's order removing the children from father's custody.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father were never married and lived separately, with mother having primary physical custody of the children. The record is unclear, but it appears that father had some physical custody of the children. The family first came to the attention of the Los Angeles County Department of Children and Family Services (Department) after the Department received two referrals involving separate incidents of domestic violence.

In May 2015, mother took the children to visit the paternal grandparents at their home. Father arrived at his parents' home, admittedly intoxicated and under the influence of drugs. Mother locked herself and the children into a room in the paternal grandparents' home; father attempted to kick in the door and told mother he would kill her. Father eventually left. The referring party told the Department that mother and father had a history of domestic violence.

In June 2015, both children witnessed a physical altercation between mother and maternal grandfather. Javier intervened in the fight, biting maternal grandfather to stop the altercation. Mother was intoxicated at the time.

Between May and September 2015, the Department interviewed extended family

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

members regarding the issues facing the family. Father's sister revealed that he had a history of illicit drug use and was in a rehabilitation center.

The Department interviewed both children. Javier believed that his father wanted to kill him, his mother, and his sister. Javier also disclosed witnessing a prior physical altercation between mother and father, where father hit mother with a chair and mother kicked father. Jacqueline told the Department that father was "mean" to mother. The Department's jurisdiction/disposition report noted that both mother and father had a history of substance abuse.

The Department filed a petition on August 2, 2015, under section 300, subdivisions (a) and (b), alleging substance abuse by mother and father, and domestic violence issues.

At the jurisdictional hearing on October 5, 2015, the court ordered the children detained. The court dismissed two counts under section 300, subdivision (a), amended four counts under section 300, subdivision (b), by interlineation, and sustained those four counts as amended. Mother asked the court to consider an alternative to dependency under section 360. The court rejected this request, stating that the facts of the case were too severe to warrant this alternative.

The court immediately proceeded to disposition and ordered the children removed from the father's custody, finding by clear and convincing evidence under section 361, subdivision (c), there would be a substantial risk if they were returned to the custody of father. The children remained in mother's physical custody. Father was granted monitored visitations with the children. Father filed a timely notice of appeal.

DISCUSSION

Jurisdiction

Father contends the jurisdictional findings involving his conduct are not supported by substantial evidence. The Department contends father fails to raise a justiciable issue

because he does not challenge the jurisdictional findings based on mother's conduct. Because mother has not appealed the court's jurisdictional finding, we decline to exercise our discretion to address whether the court erred and we do not reach the merits of father's challenge to the court's jurisdictional findings. (*In re J.C.*, (2014), 233 Cal.App.4th 1, 3-4; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1490-1492.)

“‘[A] jurisdictional finding against one parent is good against both. More accurately, the minor is dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent.’ [Citations.] The child thus remains a dependent of the juvenile court.” (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1161.) “It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue. [Citations.]” (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1489.)

Father concedes that this court is not required to consider the question of justiciability. He argues that this court should exercise its discretion to examine the jurisdictional finding against him because it serves as the basis for the removal order and is prejudicial to the father because of possible implications in future custody determinations and in this and future cases. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*).) In *Drake M.*, the court determined the difference between the father being an “offending” parent versus a “non-offending” parent was enough prejudice to warrant the exercise of discretion. The court reasoned, “Such a distinction may have far reaching implications with respect to future dependency proceedings in this case and father’s parental rights.” (*Id.* at p. 763.) Like father here, the father in *Drake M.* did not challenge jurisdictional findings based on mother’s role, but only challenged the court’s exercise of jurisdiction based on his use of medical marijuana. The child was 14 months old, well fed, and well cared for, and father was employed. The Department reported that father appeared capable of providing for the child’s basic needs, and at disposition, the court had ordered the child to remain placed with father. (*Id.* at pp. 758, 760-762.)

The facts relating to the father in *Drake M.* bear no resemblance to the facts before

the court in this case, where there is ample evidence father's conduct contributed to the issues facing this family. We do not read *Drake M.*, *supra*, 211 Cal.App.4th at page 763, as holding as a matter of law that the characterization of a parent as "offending" renders any challenge to a jurisdictional finding justiciable. *Drake M.* recognizes that appellate courts retain discretion to review jurisdictional findings, which necessarily means the decision turns on the facts of each individual case. Father's conduct here played a key role in the Department's involvement with this family. With regards to his substance abuse, father admitted to abusing drugs and drinking alcohol to the point of intoxication, but minimized the impact that this abuse had on the physical safety of his children and his ability to parent them. With regards to physical violence in the family, the children reported witnessing domestic violence between mother and father, including witnessing father pound on a door while threatening to kill mother. The children's attorney argued that father's conduct amounted to a pattern of unaddressed substance abuse issues and a contributed to a pattern of domestic violence between the parents. Father may doubt his children's recollection of past events, but the dependency court credited these accounts and found that history of domestic violence between father and mother put the children at risk of harm.

The hypothetical potential consequences to the court's jurisdictional finding against father do not persuade us to exercise our discretion to review the court's findings in this case. In any event, we have reviewed the record and conclude the facts described above would unquestionably constitute substantial evidence to support the court's jurisdictional findings as to father. No further discussion is required.

Removal Order

Father contends that the dependency court did not have the authority under section 361, subdivision (c)(1) to remove the children from father's physical custody while

leaving the children in the mother’s physical custody.² He argues that permitting the children to remain with mother shows that there were reasonable means to protect the children absent removing them from his custody. (See *In re N.S.* (2012) 97 Cal.App.4th 167, 172 fn. 5 (*N.S.*); *In re Andres G.* (1998) 64 Cal.App.4th 476, 483 (*Andres G.*); *In re Damonte A.* (1997) 57 Cal.App.4th 894, 898-900 (*Damonte A.*)). Thus, according to father, ordering the removal of the children from only father’s custody exceeded the jurisdiction of the dependency court.³ We disagree.

Father presents a question of law involving the interpretation of a statutory scheme. “‘The interpretation of a statute is a question of law we review independently.’ [Citations.]” (*In re Marquis H.* (2013) 212 Cal.App.4th 718, 725.) “‘The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.]” (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 301.) We begin with the plain language of the statute, examine the dependency scheme as a whole, and select the interpretation “most consonant with the Legislature’s overarching goals.” (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 845.) The stated purpose of dependency law is ‘to provide for the protection and safety of . . . each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor’s family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare’ (§ 202, subd. (a).)

Under section 361, a dependent child cannot be taken from the physical custody of a parent unless “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be

² Father does not challenge the sufficiency of the evidence supporting the removal from his physical custody.

³ The Department takes no position on this issue.

protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1).) The statutory scheme permits the removal of the children from only one offending parent; the language of the statute refers to "parent" in the singular, not plural, suggesting that the court has the authority to remove children from only one parent's physical custody when necessary. It is not uncommon for the dependency court to remove a child from only one parent's custody when the parents do not live together. (See e.g. *In re E.B.* (2010) 184 Cal.App.4th 568, 574 [children declared dependant based on the actions of both parents; appellate court upheld a dispositional order removing children from father and releasing them to mother]; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 450 [children ordered removed from the custody of father and placed in the home of mother]; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218-1219 [child of divorced parents properly removed only from father's home].)

Father claims that statutory scheme does not permit removal from only one parent, but cites no authority that this is true when the parents were not living together at the time the dependency petition was initiated and have no plans to resume living together. Thus, father's reliance on *Andres G.*, *N.S.*, and *Damonte A.* is misplaced.⁴ Father is correct that a court does not have the authority to remove a child from the care of one parent and then return the child to that same parent. (See *N.S.*, *supra*, 97 Cal.App.4th at p. 172 fn. 5; *Andres G.*, *supra*, 64 Cal.App.4th at p. 483; *Damonte A.*, *supra*, 57 Cal.App.4th at p. 898-900.) However, these cases are inapposite to the issue presented in this appeal. In *Andres G.*, the juvenile court found by a clear and convincing evidence that it would have been dangerous to return to the children to the parents' home, but nevertheless returned the children to that same home. (*Andres G.*, *supra*, 64 Cal.App.4th at p. 483.) *Damonte A.* presented a similar issue, where the children were placed back into the home from which they were removed. (*Damonte A.*, *supra*, 57 Cal.App.4th at 899.) We do not read

⁴ Father also relies on *In re Ashly F.* (2014) 225 Cal.App.4th 803 (*Ashly F.*). *Ashly F.* discussed the sufficiency of the evidence underlying a removal order, not, as here, the authority of the court to order a removal. (*Id.* at p. 809.)

these cases as holding, as a matter of law, that a dependency court must order the removal of the children from both parents or none, as father suggests. Rather, these cases state that a court cannot declare a home unsafe by removing the children from that home, then place the children back into that same home. Contrary to father's assertion, the statutory scheme allows a court to remove a child from the physical custody of only one offending parent when, as here, there is no single family home.

In father's case, the dependency court found by clear and convincing evidence that the physical safety of the children would not be adequately protected without removing them from his custody. No similar finding was made as to mother. Because the dependency court did not order the children removed from mother's care, the concerns raised in *Damonte A.* and *Andres G.* are missing from this case. Rather, the court removed the children from father's care only after determining that they would be at risk in father's custody with no mechanism in place to safely keep the children in his care. Nothing in section 361, subdivision (c), or the cases cited by father, precludes this disposition.

DISPOSITION

We dismiss the father's appeal of the court's jurisdictional findings and affirm the court's order removing the children from father's custody.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

RAPHAEL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.